

ESTTA Tracking number: **ESTTA323221**

Filing date: **12/21/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	CSM Tactical Gear, Inc.
Granted to Date of previous extension	12/20/2009
Address	P.O. Box 892241 Temecula, CA 92589 UNITED STATES

Attorney information	Robert O. Blinn P.O. Box 75144 Wichita, KS 67275-0144 UNITED STATES rblinn@robertblinn.com Phone:(316) 263-6400
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Applicant Information

Application No	77465590	Publication date	06/23/2009
Opposition Filing Date	12/21/2009	Opposition Period Ends	12/20/2009
Applicants	<p>Allen, David 1018 Rockport Dr. Fort Walton Beach, FL 32547 UNITED STATES</p> <p>Folley, Donald 1018 Rockport Dr. Fort Walton Beach, FL 32547 UNITED STATES</p> <p>Spence, Scott 1018 Rockport Dr. Fort Walton Beach, FL 32547 UNITED STATES</p>		

Goods/Services Affected by Opposition

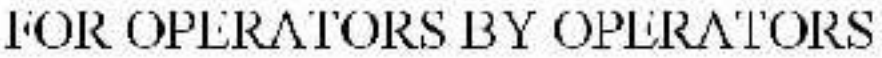
Class 025.

All goods and services in the class are opposed, namely: Hats; Hooded sweat shirts; Jackets; Shirts

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77544844	Application Date	08/12/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FOR OPERATORS BY OPERATORS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 2003/01/31 First Use In Commerce: 2003/01/31 BACKPACKS; RUCKSACKS; DUFFEL BAGS; WEARABLE STRAP-ON POUCHES Class 025. First use: First Use: 2003/01/31 First Use In Commerce: 2003/01/31 CLOTHING, NAMELY, SHIRTS, VESTS, BELTS, CAPS		

Attachments	77544844#TMSN.jpeg (1 page)(bytes) W09037 CSM-Notice of Opposition.pdf (4 pages)(135152 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/robert o blinn/
Name	Robert O. Blinn
Date	12/21/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 77/465,590
Published in the Official Gazette of June 23, 2009

CSM Tactical Gear, Inc.

Opposer,

v.

David Allen, Donald Folley
and Scott Spence

Applicants.

Opposition No. _____

NOTICE OF OPPOSITION

CSM Tactical Gear, Inc. (hereinafter "CSM"), a corporation of California, having his principal place of business at P.O. Box 892241, Temecula, California, United States, 92589, believes that it will be damaged by registration of the mark shown in Serial No. 77/465,590 in Class 25 for hats, hooded sweat shirts, jackets, shirts and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. The Applicant seeks to register the OPERATORS INCORPORATED mark for Hats; Hooded sweat shirts; Jackets; Shirts, in International Class 25, based on an intent-to-use the mark as is evidenced by the publication of said mark in the June 23, 2009 issue of the Official Gazette.
2. CSM is the owner of U.S. Trademark Application Serial No. 77/544,844 for the mark FOR OPERATORS BY OPERATORS for backpacks; rucksacks; duffel bags; wearable strap-on pouches in International Class 18; and for clothing, namely shirts, vests, belts, caps in International Class 25 as filed on August 12, 2008.

3. CSM has been using the mark FOR OPERATORS BY OPERATORS since at least as early as January 31, 2003.

4. Through CSM's use, advertising and promotion of said mark, its mark has become a highly distinctive identifier of CSM's goods, and constitutes an important and extremely valuable symbol of CSM's reputation and goodwill associated therewith.

5. Applicant is not now and never was entitled to appropriate or register as a trademark the OPERATORS INCORPORATED for the goods set forth in Serial No. 77/465,590.

6. Applicant is not entitled to exclusive use of the OPERATORS INCORPORATED trademark either on the date the application for registration of the said designation was filed, namely May 5, 2008, or on the date of publication of said application, namely June 23, 2009.

7. Applicant's goods identified in its application are closely related to CSM's goods and are offered or likely to be offered to the same classes or purchasers as CSM's goods.

8. Upon information and belief, Applicant has not used the OPERATORS INCORPORATED designation in the United States.

9. Upon information and belief, Applicant has not used the OPERATORS INCORPORATED designation prior to January 31, 2003, the date CSM first used its BY OPERATORS FOR OPERATORS mark.

10. CSM's BY OPERATORS FOR OPERATORS mark so closely resembles Applicant's OPERATORS INCORPORATED mark, so as to create public confusion, mistake or deception.

11. CSM's application to register FOR OPERATORS BY OPERATORS is currently under a notice of suspension under Section 2(d) because of Applicant's application and CSM's application serial number 77/544,844 may be refused registration should Application Serial No. 77/465,590 issue.

12. Registration of Applicant's OPERATORS INCORPORATED mark is specifically barred by the provisions of Section 2(d) of the Trademark Act of 1946 because said mark consists of or comprises a mark which so resembles a mark or trade name previously used in the United States by Opposer CSM and not abandoned, as to be likely, when used in connection with the Applicant's goods to cause confusion, mistake or deception.

13. CSM is or will be damaged by the use and registration of the OPERATORS INCORPORATED mark by Applicant for Applicant's goods because purchasers, persons in the trade and the public will mistakenly assume that such goods are associated with, endorsed by or in some other way related to or sponsored by CSM, to the detriment of CSM.

WHEREFORE, CSM prays that application Serial No. 77/465,590 be rejected and denied and that this Notice of Opposition be sustained in favor of Opposer CSM.

The fee required in 37 CFR § 2.6 is submitted herewith.

Respectfully submitted,

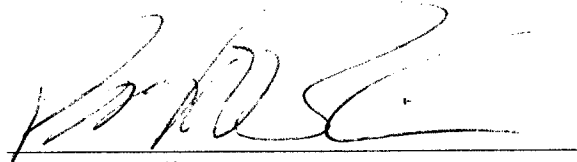
A handwritten signature in black ink, appearing to read "R. O. Blinn", followed by the date "12/21/2009".

Robert O. Blinn, Reg. #36,751
P.O. Box 75144
Wichita, KS 67275-0144
(316) 263-6400

Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION has been served upon David Allen, Donald Folley and Scott Spence, 1018 Rockport Drive, Fort Walton Beach, FL 32547 by electronic mail and deposit in the United States Mail at Wichita, Kansas, in a sealed envelope with first class postage thereon fully prepaid, this 21st day of December, 2009.



Robert O. Blinn